Supporting Statement for the Recordkeeping and Disclosure requirements in Connection with Regulation B (Equal Credit Opportunity Act) (Reg B; OMB No. 7100-0201)

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to extend, without revision, the mandatory recordkeeping and disclosure requirements in connection with Regulation B, which implements the Equal Credit Opportunity Act (ECOA).[1] The Board is required to renew these requirements every three years pursuant to the Paperwork Reduction Act of 1995 (PRA), which classifies reporting, recordkeeping, or disclosure requirements of a regulation as "required information collections."[2] On November 2, 2005, a notice of renewal was published in the *Federal Register* for public comment.

The ECOA and Regulation B prohibit discrimination in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age, or other specified bases. To aid in implementation of this prohibition, the statute and regulation also subject creditors to various mandatory disclosure requirements, notification provisions, credit history reporting, monitoring rules, and recordkeeping requirements. These requirements are triggered by specific events and disclosures must be provided within the time periods established by the Act and regulation. There are no mandatory reporting forms, but the Board adopted model forms to ease compliance burden.

Regulation B applies to all types of creditors, not just state member banks (SMBs).[3] However, under the PRA, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for creditors that meet the criteria set forth in Regulation B. Other federal agencies account for the paperwork burden on other creditors. The estimated annual burden for the creditors that meet the criteria is 189,540 hours for the 1,341 creditors that are deemed "respondents" for purposes of the PRA.

Background and Justification

The ECOA is designed to ensure that credit is made available to all creditworthy customers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 USC 1600 *et seq.*). Some of the recordkeeping and disclosure requirements of Regulation B that implement this prohibition were mandated by Congress in the Act, while others were adopted by the Board under its authority to implement the statute by regulation.

[1] ECOA was enacted in 1974 and is codified at 15 U.S.C. 1691. Regulation B is located at 12 C.F.R. Part 202.
[2] 44 U.S.C. § 3501 *et seq*.
[3] Appendix A – Federal Enforcement Agencies – of Regulation B defines the Federal Reserve-regulated institutions as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), which became effective in October 2000, authorizes the use of electronic records to satisfy the legal requirement that documents be in writing.[4] The E-Sign Act contains special rules for the use of electronic disclosures in consumer transactions; consumer disclosures may be provided electronically only if the consumer provided affirmative consent after receiving certain information specified in the statute. The E-Sign Act did not require the Board to adopt implementing regulations.

In April 2001, the Board issued an interim final rule setting forth the general rule that institutions may provide disclosures required under Regulation B electronically if the institution complies with the requirements of the E-Sign Act.[5] The interim rule also provided uniform standards for satisfying the timing and delivery requirements of Regulation B when electronic disclosures are used. Institutions may provide electronic disclosures under their existing policies and practices, or may follow the interim rules.[6] Depository institutions that provide electronic disclosures must do so in accordance with the consent requirements of the E-Sign Act, but they need not follow the additional requirements of the 2001 interim rule.

In March 2003, the Board issued revisions to Regulation B that included adjusting the limited exceptions for public-utilities credit; creating an exception to the general prohibition against inquiring about, or noting, applicant characteristics for non-mortgage credit transactions for the purpose of conducting a self-test; and requiring record retention for prescreened credit solicitations. Other amendments clarified: the definition of "creditor;" the rules for evaluating married and unmarried credit applicants; and certain rules about obtaining signatures of nonapplicants.[7]

Description of Information Collection

The following information descriptions pertain to the paperwork requirements of Regulation B.

Notification Requirements (Section 202.9)

No other federal law mandates the following disclosures, although the Fair Credit Reporting Act requires related, but different, disclosures in some of the same circumstances. Moreover, some states may have similar requirements.

Consumer credit. Under the ECOA and Regulation B, an applicant is entitled to notice of the action taken on a credit application and, if the creditor's decision results in the denial or termination of credit, a written statement of the specific reasons for the adverse action (or disclosure of the right to request the reasons). The notification provides credit applicants and borrowers an opportunity to correct errors in their credit history, helps them identify problems in their credit standing, and improves their understanding of the credit-granting process. When adverse action is taken against a consumer based on information from a consumer reporting agency, the FCRA requires additional disclosures, which may be provided on the same document.

[4] 15 U.S.C. § 7001 et seq.
[5] 66 FR 17779 (April 4, 2001).
[6] 66 FR 41439 (August 8, 2001).
[7] 68 FR 13144 (March 18, 2003).

The adverse action notice must generally be in writing, except that creditors that did not receive more than 150 applications during the preceding year may provide notices of adverse action orally. A notice of adverse action must be given within thirty days after (1) receipt of a completed application; (2) the denial of credit on an incomplete application (unless a notice of incompleteness is provided); or (3) adverse action regarding an existing account. A creditor that makes a counter-offer (to grant credit on terms other than those requested) has ninety days from the counteroffer to give the adverse action notice if the applicant does not accept the counter-offer or use the credit offered.

Business credit. Generally, a business applicant's asset size determines a creditor's precise obligations. When a creditor takes adverse action on an application from a business with $1 million or less in annual revenues, the creditor may notify the business applicant orally or in writing. The creditor must also provide the applicant with reasons for an adverse action or a notice telling the applicant of its right to request the reasons. These notices must be provided within the same time periods that apply in the case of consumer applicants. The notice of the business' right to request reasons for adverse action, solely may be provided at the time of application in a retainable form or, if an application is made by telephone, orally. A business with more than $1 million in annual revenues is entitled to oral or written notice of adverse action within a reasonable time of the action taken and, if timely requested, a written statement of reasons for an adverse action.

Credit History Reporting (Section 202.10)

Creditors that report credit history must report histories of accounts that spouses are permitted to use or on which they are contractually liable in a fashion that reflects both spouses' participation. This requirement applies to any creditor that reports credit history to credit reporting agencies or to other creditors.

Recordkeeping Requirements Relating to Applications, Actions and Prescreened Solicitations (Section 202.12)

A creditor must retain for twenty-five months any written or recorded material related to a consumer credit application, as well as copies of any notification of action taken and statement of specific reasons for adverse action (or any written notation or memo of an oral notification and statement) and any written statement submitted by the applicant alleging a violation of ECOA or Regulation B. Comparable records of business credit applications must be retained for twelve months, except that records of applications from businesses with gross revenues exceeding $1 million must be kept for sixty days (or twelve months, if the applicant requests in writing the reason for the adverse action or that the records be retained). The record retention requirements also extend to information used in prescreened credit solicitations. The information to be retained includes records related to the text of the solicitation, the criteria used to select potential recipients of the prescreened solicitations, and correspondence related to consumer complaints about the solicitations.

Monitoring Provisions (Section 202.13)

A creditor is required to request that an applicant indicate his or her race, ethnicity, sex, age, and marital status in connection with applications for credit primarily for purchasing or refinancing

real property to be occupied by the applicant as a principal residence and secured by a lien on the property. Creditors are otherwise prohibited from collecting such applicant data with some exceptions. The applicant must be informed that the information is being requested by the federal government for the purpose of monitoring the creditor's compliance with federal law and if the applicant declines to provide the information, the bank will note the applicant's ethnicity, race, and sex based on visual observation or surname.

Applicant's Right to Copy of Appraisal (Section 202.14)

An applicant has a right to a copy of any appraisal report used in connection with an application for a loan to be secured by a dwelling. Creditors may elect either to provide a copy of the appraisal report to all applicants for covered loans or provide the appraisal only upon request. Creditors who choose to provide the appraisal only upon request must notify all applicants for covered loans of their right to request a copy of the appraisal. The notice is not required to be in any particular format, but the regulation contains model language to ease compliance. Creditors can give the notice at any time during the application process, but not later than when the creditor provides notification to the applicant of the action taken.

Recordkeeping Requirements for Self-test (Sections 202.12 & 202.15)

As defined by Regulation B, a self-test is any program, practice, or study that is designed and used specifically to determine the extent or effectiveness of a creditor's compliance with the ECOA or Regulation B, and creates data or factual information that would not otherwise be available and cannot be derived from loan or application files or other records related to credit transactions. The results or report of a self-test, as well as data or factual information created by the self-test and any analysis, opinions, or conclusions, are privileged if the creditor: (1) takes appropriate corrective action to address any likely violations identified by the self-test, (2) refrains from disclosing any part of the report or results, and (3) retains all written or recorded information required to be retained about the self-test and produces it when necessary to determine whether the privilege applies.

A creditor ordinarily must retain all written or recorded information about a self-test for twenty-five months. If a creditor has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation, or if it has been served with notice of a civil action, the creditor must retain the information until final disposition of the matter, unless an earlier time is allowed by the appropriate agency or court order.

Disclosure Requirement When Collecting Information for Self-Tests (Section 202.5)

When a creditor inquires about, and notes, personal characteristics such as race or national origin for the purpose of conducting a self-test under § 202.15, the creditor must disclose orally or in writing to the consumer at the time of the information request that providing the information is optional, that the information request is to monitor compliance with ECOA, that federal law prohibits discrimination on the basis of this information or on the basis of an applicant's decision not to furnish this information, and that, if applicable, certain information may be noted by visual observation or surname.

Time Schedule for Information Collection

Regulation B information collection requirements are triggered by certain events, disclosures must be provided to applicants within prescribed times, and records must be retained for specified periods.

Legal Status

The Board's Legal Division has determined that 15 USC 1691b(a)(1) and Public Law 104-208, § 2302(a) authorize the Board to mandate the information disclosures. The adverse action disclosure is confidential between the institution and the consumer involved. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 USC 522 (b)).

Sensitive Questions

Sensitive questions are not contained in any report or survey sponsored by the Federal Reserve in connection with Regulation B. However, applicants for mortgage loans are asked to voluntarily provide information on ethnicity, sex, age, and marital status so that regulators may monitor for compliance with the law. If they do not provide the information, certain information may be noted by visual observation or surname. For all non-mortgage credit, a creditor may not ask or note applicants' sex, race, color, religion, or national origin. There is an exception permitting collection of this information for purposes of conducting a self-test that meets the requirements of § 202.15. It is at the option of the applicant to provide this information.

Consultation Outside the Agency

There has been no consultation of specific individuals outside the Federal Reserve System.

Estimate of Cost to the Federal Reserve System

Since the Federal Reserve does not collect any information in connection with Regulation B, the related cost to the System is negligible.

Estimate of Respondent Burden

The estimated annual burden for this information collection is 189,540 hours, as shown in the table below. The table provides the estimated annual burden for the 1,341 creditors to which Regulation B applies. The estimated total annual burden represents about 3.5 percent of total Federal Reserve System burden.

For purposes of the PRA no paperwork burden is associated with the recordkeeping requirement for information about prescreen solicitations (202.12(b)(7)) because the regulation does not specify records to be retained as evidence of compliance.

	Number of respondents	*Estimated annual frequency*	*Estimated response time*	*Estimated annual burden hours*
Notice of action (202.9)	1,341	1,715	2.50 mins	95,824
Credit history reporting (202.10)	1,341	850	2.00 mins	37,994
Recordkeeping for Applications & Actions (202.12)	1,341	1	8 hours	10,728
Monitoring data (202.13)	1,341	360	0.50 mins	4,023
Appraisal (202.14):				
Appraisal report upon request	1,341	190	5.00 mins	21,232
Notice of right to appraisal	1,341	1,650	0.25 mins	9,219
Self-testing:				
Recordkeeping of test (202.12)	230	1	2 hours	460
Recordkeeping of corrective action (202.15)	60	1	8 hours	480
Disclosure for optional self-test (202.5)	230	2,500	1 min	9,580
Total				189,540

Based on an hourly cost of $20, the annual cost to the public is estimated to be $3,790,800.

Financial Industry Burden Averages

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority.[8] They may, but are not required to, use the Federal Reserve's burden estimates. Using the Federal Reserve's method, the total estimated annual burden for all financial institutions

[8] Appendix B – Federal Enforcement Agencies – of Regulation B lists those federal agencies that enforce the regulation for particular classes of business. The federal financial agencies include: the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration. The federal non-financial agencies include: Department of Transportation, Packers and Stockyards Administration, U.S. Small Business Administration, Securities and Exchange Commission, Farm Credit Administration, and Federal Trade Commission.

including Federal Reserve-regulated institutions, subject to Regulation B would be approximately 2,734,119 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. All covered institutions, such as retailers, finance companies, mortgage bankers, and depository institutions (of which there are approximately 19,300) potentially are affected by this collection of information, and thus are respondents for purposes of the PRA.